

EXHIBIT

6

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TENNESSEE

3 - - - - -x

4 ULTIMA SERVICES CORPORATION,
5 Plaintiff,
6 No. 2:20-cv-00041-DCLC-CRW
7 -against-

8 U.S. DEPARTMENT OF AGRICULTURE, U.S.
9 SMALL BUSINESS ADMINISTRATION, SECRETARY
10 OF AGRICULTURE, and ADMINISTRATOR OF THE
11 SMALL BUSINESS ADMINISTRATION,

12 Defendants.

13 - - - - -x

14 March 7, 2022
15 10:03 a.m. (EST)

16 DEPOSITION of Dr. Jon Wainwright, the
17 Expert Witness in the above-entitled
18 action, held at the above time and place,
19 taken before Garry J. Torres, a
20 Stenographer and Notary Public of the
21 State of New York, pursuant to the Federal
22 Rules of Civil Procedure, Notice and
23 stipulations between Counsel.

24 * * *

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES: 2 3 CENTER FOR INDIVIDUAL RIGHTS 4 Attorneys for Plaintiff 5 ULTIMA SERVICES CORPORATION 6 1100 Connecticut Ave, NW 7 Suite 625 8 Washington, D.C. 20036 9 TEL: (202) 833-8400 10 EMAIL: scott@cir-usa.org 11 BY: MICHAEL E. ROSMAN, ESQ. 12 13 CHRISTINE DINAN, ESQ. 14 Attorneys for Defendants 15 16 17 18 19 20 21 22 23 24 25</p> <p>12 ALSO PRESENT: 13 14 MICHELLE SCOTT 15 ANDREW BRANIFF 16 K'SHAANI SMITH 17 JULIET GRAY 18 * * * 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 JON WAINWRIGHT, the Expert 2 Witness herein, having first been duly 3 sworn by the Notary Public, was examined 4 and testified as follows: 5 MR. ROSMAN: Dr. Wainwright, I'm 6 Michael Rosman. I'm the -- one of the 7 attorneys for the plaintiff in this 8 case. I'll be asking you a series of 9 questions which you should wait 'til I 10 finish the question and then answer. 11 If you don't understand a question 12 that I've asked please feel free to 13 let me know on what you don't 14 understand and I might choose to 15 rephrase it. 16 If we need to take break at 17 points or we will need to take a break 18 at points, but if you need to take a 19 break at points let us know and I'll 20 try to find an appropriate spot to do 21 that. 22 You have been deposed before, 23 sir? 24 THE WITNESS: Yes. 25 MR. ROSMAN: All right. I'm</p>
<p style="text-align: right;">Page 3</p> <p>1 STIPULATIONS 2 IT IS HEREBY STIPULATED AND AGREED, by 3 and among counsel for the respective 4 parties hereto, that the filing, sealing 5 and certification of the within deposition 6 shall be and the same are hereby waived; 7 IT IS FURTHER STIPULATED AND AGREED 8 that all objections, except as to form of 9 the question, shall be reserved to the 10 time of the trial; 11 IT IS FURTHER STIPULATED AND AGREED 12 that the within deposition may be signed 13 before any Notary Public with the same 14 force and effect as if signed and sworn to 15 before the Court. 16 * * * 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 going to try to introduce your CV. 2 You have a copy of it though, right? 3 THE WITNESS: I do. 4 MR. ROSMAN: Okay. Let me see 5 if this -- I'm new to this virtual. 6 Now, can everybody else -- I tried to 7 introduce the CV as an exhibit as 8 Exhibit 1. Does everybody else have 9 that available to them now? 10 MS. DINAN: No, it's not showing 11 up on any of my screens. 12 MR. ROSMAN: It says my exhibit 13 has been introduced. 14 (Whereupon, an off-the-record 15 discussion was held.) 16 MR. ROSMAN: Why don't we just 17 go through some of your background, 18 Dr. Wainwright, and we'll worry about 19 the introduction of the exhibit at 20 some point. 21 EXAMINATION 22 BY MR. ROSMAN: 23 Q. What is your name? 24 A. Jon Wainwright. 25 Q. Where do you reside?</p>

<p style="text-align: right;">Page 162</p> <p>1 testimony that some of the 53,000 initial 2 records never got used in the report 3 because you didn't want to, I think you 4 said, muddy the waters by including them. 5 Could you explain a little bit 6 more what you meant by that? 7 A. Yeah, muddy the waters maybe 8 isn't the right phrase. It was more to 9 keep things clear and understandable in my 10 own mind as much as anything else. I 11 think I mentioned there were -- 12 I'll just take a hypothetical 13 study that would have looked at all the 14 contracts in construction, all the prime 15 contracts in construction and all the 16 subcontracts in construction. 17 But then went further and 18 divided the construction contracts up into 19 contracts over \$200,000, contracts under 20 \$25,000, contracts between \$25,000 and 21 \$200,000 or contracts that were subject to 22 MBE goals versus contracts that weren't 23 subject to MBE goals. 24 I think looking at those 25 statistics would all be interesting in</p>	<p style="text-align: right;">Page 164</p> <p>1 consistent across the studies -- the 205 2 studies and what was being measured as it 3 could be and save those other records for 4 an analysis for another day. 5 Q. So would it be fair to say that 6 that data was excluded because it was not 7 necessarily consistent with what you were 8 trying to doing with your analysis? 9 A. Yes. 10 MR. ROSMAN: Objection to form. 11 Q. So for the disparity studies in 12 the group of 205 that you looked at that 13 didn't use statistical significance 14 testing, do you think the evidence from 15 those studies is still reliable? 16 A. Yes. That was the whole point 17 of doing the metaanalysis was to see what 18 we could learn regardless of the -- some 19 significant differences between the 20 studies and how they were performed. 21 They were done by different 22 consultants, at different points in time, 23 with different levels of resources and 24 using different methodologies for either 25 assessing statistical significance or not,</p>
<p style="text-align: right;">Page 163</p> <p>1 their own right, but I was -- I didn't 2 want to be asked a question possibly, 3 well, if you included these others, how 4 did they make the resulting disparities 5 larger or smaller or change them. 6 And so I was trying to come 7 up -- those 27,000 records are -- you 8 know, roughly all looking at the same kind 9 of items in those disparity studies 10 because not all studies looked at 11 contracts with and without goals or broke 12 contracts down by size categories or just 13 looked at federal funding versus state 14 funding. 15 And since none of those issues 16 as far as I knew were really at issue in 17 this report, I took them out. I 18 didn't -- I don't even know what the 19 results would be if they would be stronger 20 or weaker or different at all if I 21 included those. 22 It's not like I ran the results 23 and didn't like them and threw that stuff 24 out. I just was trying to come up with a 25 data set that -- you know, really was as</p>	<p style="text-align: right;">Page 165</p> <p>1 or measuring availability and -- you know, 2 that was kind of the whole point of my 3 metaanalysis is to see -- you know, what, 4 if anything, we could learn regardless of 5 some of those differences or something you 6 might be able to critique about any single 7 study standing alone. 8 Q. Earlier Mr. Rosman asked you 9 about whether NERA studies account for 10 capacity and you mentioned that you don't 11 know if capacity, as Mr. Rosman defined 12 it, then could be measured. 13 Would you explain a bit more 14 what you meant by that? 15 A. Well, I think I'm not sure it's 16 fair to say Mr. Rosman actually defined 17 it, but he gave me an example, I believe, 18 which was the ability to do work, which is 19 not something I'm aware of any statistical 20 measure of. 21 You know, it's like 22 qualifications. There's all different 23 aspects to qualifications and capacity. I 24 tried to control for and include as many 25 as I could in the different sections of</p>

<p style="text-align: right;">Page 166</p> <p>1 the report. I can do that better in -- 2 with some data sets than with others. 3 So in the PUMS data there's all 4 kinds of additional variables that speak 5 to qualifications and capacities that I 6 was able to include. Some of the 7 disparity studies attempt to directly 8 incorporate capacity into their measures 9 or whatever capacity means. 10 It means different things for 11 different consultants and different 12 attorneys. But -- you know, some 13 disparity study consultants try to 14 incorporate some aspects of capacity 15 directly into their availability measures. 16 And I -- you know, we looked at 17 those as well. I have my own way of doing 18 it and I think I've outlined -- you know, 19 in great detail how and why I choose to do 20 it that way, but the main reason is to 21 avoid including variables that themselves 22 could be negatively impacted by 23 discrimination. 24 So to try to measure and test 25 for the presence of discrimination by</p>	<p style="text-align: right;">Page 168</p> <p>1 I mean you're not in business 2 unless you're trying to do business, by 3 and large, and further in the regression 4 analyses in those NERA studies, there's 5 all kinds of different measures in 6 qualifications and capacity. Human 7 capital or education levels being one of 8 the most important. 9 Q. In your opinion, do you believe 10 the disparities you talked about earlier 11 in tables 2.2 to 2.8 could be caused 12 exclusively by sex discrimination? 13 A. No. That's -- having researched 14 in this area for over a quarter of a 15 century now or maybe a third of a century, 16 I would say absolutely not. 17 I see evidence routinely of both 18 kinds. It's also the case and this is 19 just anecdotal as I sit here today but 20 most of those ethic groupings, the 21 majority of businesses in those groupings 22 by race and ethnicity are male. 23 So to -- you know, the concept 24 that somehow there is -- no race 25 discrimination and sex discrimination is</p>
<p style="text-align: right;">Page 167</p> <p>1 using variables that are themselves 2 potentially subject to discrimination, 3 like, most economists will tell you is 4 wrong headed. 5 So -- you know, that's why I did 6 what I did, but again, the purpose of the 7 metaanalysis was to say -- you know, all 8 those different approaches are welcome. 9 Let's see if we can determine any 10 commonalities across these studies despite 11 that or did they all reach completely 12 different conclusions. 13 Q. Are some measures for capacity 14 as you might define it included in your 15 studies? 16 A. Yes. 17 Q. How would you define capacity? 18 A. Well, again, I don't know that 19 there's a single definition but we, for 20 example, in our measures of availability 21 we're only looking at firms that are 22 currently in business, in the relevant 23 geographic market, in those relevant NAICS 24 codes, product markets that matter, all of 25 those things speak to capacity.</p>	<p style="text-align: right;">Page 169</p> <p>1 exclusively driving the results I'm seeing 2 does not comport with my own experience as 3 a researcher over all that time, nor does 4 it I think mathematically make sense 5 because women still tend to be 6 significantly less than half of the 7 businesses in those ethic categories. 8 Q. Just to confirm one point in 9 your answer, were you saying to your 10 knowledge that the majority of those -- of 11 the businesses in the data sets were owned 12 by men? 13 A. You broke up a little bit there. 14 Q. I was just trying to confirm. 15 Were you in your answer saying that the 16 majority of the business you looked at in 17 the data that you studied were owned by 18 men? 19 A. Yes. 20 Q. In your opinion do you believe 21 the disparities in tables 4.1 to 4.9 could 22 be caused exclusively by sex 23 discrimination? 24 A. No. 25 Q. Just stepping back a moment as</p>

<p style="text-align: right;">Page 170</p> <p>1 we've discussed there were three main 2 sections of your report. Could you just 3 briefly explain why that is and how you 4 believe they interact with each other? 5 A. Sure. The first section, just 6 looking at the disparity studies, what 7 that establishes primarily, at least to my 8 mind, is that there are very large and 9 adverse disparities facing every single 10 kind of minority business, pretty much in 11 every single state of the union that at 12 least the 30 or 40 that are represented 13 here, and across different time periods 14 pretty much, if not consistently, across 15 procurement categories. You know, no one 16 single category stands out as having no 17 disparities. 18 So the first section of the 19 report was simply to establish that do 20 these disparities exist in the first 21 place, and what you can learn from this 22 metaanalysis of the 205 studies is yes, 23 they do. 24 They tend to be -- they tend to 25 exist for all these different minority</p>	<p style="text-align: right;">Page 172</p> <p>1 it's really the only dedicated census of 2 minority business. So it's interesting 3 and valuable I think for the judge and for 4 anybody reading this report in its own 5 right. It also allows you to across the 6 board test for statistical significance in 7 a way that at least some of the disparity 8 studies in the first section don't always 9 allow you to do. So I think it helped 10 fill that gap. 11 And then in the final section of 12 the report was really meant to examine 13 this question of -- because it's not the 14 case that the only thing driving 15 disparities is discrimination. As I 16 mentioned in the report there, tends to be 17 more business ownership tends to rise with 18 age, for example. Successful business 19 outcomes tend to be positively correlated 20 with education levels, for example. 21 So it is a very fair question to 22 ask if qualifications and capacity factors 23 like that explain these large and adverse 24 and statistically significant disparities. 25 And I think my general</p>
<p style="text-align: right;">Page 171</p> <p>1 groups. They tend to exist across all the 2 different consultants that do the studies 3 across all the different periods of time 4 that we looked at and across all the 5 different industry categories at whatever 6 level of disaggregation that we were able 7 to look at. 8 But I think as I even opened the 9 second or third section of my report with 10 is it's fair to ask and the reason those 11 other sections are in there is A, there's 12 not a whole lot of data anyway that's 13 dedicated to minority business owners or 14 minority businesses. 15 So it behooves us to try to look 16 at everything that is out there and is 17 available, but it's fair to ask if the 18 disparities that we see in these 205 19 studies are due to some factor could be 20 caused or explained by factors other than 21 discrimination. 22 And so really the -- the second 23 section of the report is really partly 24 meant to, A, to just look at the SBO data 25 and the ABS data because it exists and</p>	<p style="text-align: right;">Page 173</p> <p>1 conclusion from the third section is that 2 they explain some of the disparities, but 3 they leave huge residuals that are 4 unexplained even after controlling for a 5 very large number of other relevant human 6 capital and financial endowment factors. 7 So to me I think that's why 8 maybe I harped on why all three sections 9 are important to be considered in tandem 10 or as a whole because they address -- you 11 know, it's only -- 12 I think only by looking at all 13 three sections together do you -- do you 14 see the clear picture of at least what I 15 was trying to establish is do these 16 disparities exist, did they tend to be 17 isolated to particular groups or 18 particular states or particular 19 industries. 20 You know, do they exist, yes; 21 are they isolated to any of those 22 particular groups or categories, no; do 23 they tend to be statistically significant, 24 yes; and finally can they be explained by 25 other factors besides -- are they</p>

<p style="text-align: right;">Page 174</p> <p>1 consistent with the possibility that other 2 factors relevant to economic outcomes can 3 explain them and the answer to that is no. 4 So all those things together I 5 think makes the whole package that I've 6 tried to -- that I wanted to look at and 7 tried to present. 8 Q. Thank you. That's all the 9 questions I have. 10 MR. ROSMAN: I'm just going to 11 follow up on one of the things that 12 Ms. Dinan asked you about. 13 EXAMINATION 14 BY MR. ROSMAN: 15 Q. You said you were concerned 16 about including variables that could 17 themselves be affected by discrimination. 18 How could you assess whether or not a 19 variable like firm size has been affected 20 by discrimination? 21 A. Assessing it is not easy, but 22 following the logic is a little easier. 23 If there is discrimination in the market 24 aimed at preventing minority business from 25 emerging, how is that going to manifest</p>	<p style="text-align: right;">Page 176</p> <p>1 out that if discrimination exists, it 2 doesn't take a great leap of logic to 3 understand that it would manifest itself 4 in lower revenues. 5 Q. No, to be sure. But I guess 6 what I'm saying is if they're not caused 7 by discrimination, aren't you omitting a 8 very important variable that you might 9 otherwise attribute to discrimination? 10 A. I think if you wanted to look at 11 that you'd put revenues on the left-hand 12 side of the equation and look at that and 13 some disparity study consultants have done 14 exactly that and still found large and 15 adverse significant disparities. 16 Q. I'm done. 17 18 (Whereupon, the Deposition of 19 Dr. Jon Wainwright conducted via Zoom 20 videoconference concluded at 4:13 p.m. 21 (EST) on Monday, March 7, 2022.) 22 23 24 25</p>
<p style="text-align: right;">Page 175</p> <p>1 itself, it's going to manifest itself in 2 lower levels of sales, fewer contracts 3 that are won, higher prices being charged 4 by suppliers, all of those things are 5 going to filter their way into revenues. 6 So controlling for revenues, for 7 example, would be like controlling for pay 8 in a pay discrimination investigation. So 9 I mean that is -- if there is 10 discrimination in the market, that is one 11 place you're going to see it is in 12 earnings or revenues and whether firms 13 become formed in the first place. 14 So that's why and I -- there's a 15 whole chapter in the national guidelines 16 to try to explain why that is and I think 17 most economists understand why you would 18 not put those variables on the right-hand 19 side of a regression. 20 Q. Let me follow up. If you assume 21 that they're caused by discrimination, 22 aren't you just assuming the answer to the 23 question that you're trying to answer? 24 A. No, and I'm not assuming they're 25 caused by discrimination. I'm pointing</p>	<p style="text-align: right;">Page 177</p> <p>1 I have read the foregoing transcript 2 of my deposition, and find it to be 3 true and accurate to the best of my 4 knowledge and belief? 5 6 7 _____ 8 JON WAINWRIGHT 9 10 Sworn and subscribed to before me, 11 On this ____ day 12 of _____ 2022. 13 14 15 16 Notary_____ 17 My Commission Expires_____ 18 19 20 21 22 23 24 25</p>

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ERRATA

p12

line 2 midwest fence should be Midwest Fence

line 3 disadvantaged business enterprise should be Disadvantaged Business Enterprise

line 15 Rothy should be Roth throughout

line 23 Rothy Two should be Rothe II

p13

line 10 DV should be DC

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lines 22-23 Cossman should be Kossman

p23

line 5 defendant's expert should be defendant's expert report

p27

lines 21-22 Econ Salt should be Econsult

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line 18 alluded should be eluded

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line 4 subanalysis should be subanalyses

line 14 MBB should be MBE

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line 8 the total should be that total

line 14 MBA should be MBE

p60

line 50 procontractor should be prime contractor

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line 60 Prince George should be Prince George's

line 25 interest or should should be interest should

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line 9 consensus should be custom census

p67

line 24 minority should be minorities

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line 2 consultants should be consultants'

line 19 could should be could have

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line 8 DOJ should be did DOJ

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line 14 ADS should be ABS

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line 10 business should be census

p125
line 7 clients should be client's

p129
line 1 American community survey should be American Community Survey

p149
Lowery should be Lowrey throughout

p149
Fairley should be Fairlie throughout

p153
line 3 interest in dividence should be interest and dividend

p157
lines 17-18 bureau of labor statistics should be Bureau of Labor Statistics
lines 21-23 bureau of labor statistics should be Bureau of Labor Statistics,
bureau of economic analysis should be Bureau of Economic Analysis, census bureau should be Census Bureau

p159
line 5 census bureau should be Census Bureau

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line 19 factor could should be factor that could

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14	Attorney Mr. Rosman from Center For Individual Rights has retained all		
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2	VERITEXT LEGAL SOLUTIONS	
3	CASE NAME: ULTIMA SERVICES CORPORATION	
4	U.S. DEPARTMENT OF AGRICULTURE et al.	
5	DATE OF DEPOSITION: MARCH 7, 2022	
6	WITNESS NAME: DR. JON WAINWRIGHT	
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19	<i>Jon Wainwright</i>	
20	JON WAINWRIGHT	
21	SUBSCRIBED AND SWORN TO	
22	BEFORE ME THIS DAY	
23	OF , 2022.	
24	NOTARY PUBLIC	
25	MY COMMISSION EXPIRES	

See attached

1 CERTIFICATION

2

3 I, Garry J. Torres, a Notary Public

4 for and within the State of New York, do

5 hereby certify:

6 That, Dr. Jon Wainwright, the witness

7 whose testimony as herein set forth, was

8 duly sworn by me; and that the within

9 transcript is a true record of the

10 testimony given by said witness.

11 I further certify that I am not

12 related to any of the parties to this

13 action by blood or marriage, and that I am

14 in no way interested in the outcome of

15 this matter.

16 IN WITNESS WHEREOF, I have hereunto

17 set my hand this 17th day of March, 2022.

18

19 *Garry J. Torres*

20 GARRY J. TORRES

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